

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 3, 2012

AMENDED IN SENATE APRIL 24, 2012

AMENDED IN SENATE APRIL 10, 2012

SENATE BILL

No. 1241

Introduced by Senator Kehoe

February 23, 2012

An act to amend Sections 65302 and 65302.5 of, and to add Sections ~~65040.13~~, 65040.14, and 66474.02 to, the Government Code, and to add Section 21083.01 to, the Public Resources Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 1241, as amended, Kehoe. Land use: general plan: safety element: fire hazard impacts.

(1) The Planning and Zoning Law requires the legislative body of a city or county to adopt a comprehensive, long-term general plan that includes various elements, including, among others, a safety element for the protection of the community from unreasonable risks associated with, among other things, wildland and urban fires. The safety element includes requirements for state responsibility areas, as defined, and very high fire hazard severity zones, as defined.

This bill would revise the safety element requirements for state responsibility areas and very high fire hazard severity zones, as specified, and require the safety element, upon the next revision of the housing element on or after January 1, 2013, to be reviewed and updated as necessary to address the risk of fire in state responsibility areas and very high fire hazard severity zones, taking into account specified

considerations, including, among others, the most recent version of the Office of Planning and Research’s “Fire Hazard Planning” document; ~~which this bill would require the office to update on or before January 1, 2014.~~ The bill would also require the office to, at the next update of its general plan guidelines, include these provisions, or a reference to these provisions and any other materials related to fire hazards or fire safety it deems appropriate. By imposing new duties on a city or county with regard to reviewing and updating its general plan, the bill would impose a state-mandated local program.

(2) The Subdivision Map Act requires the legislative body of a city or county to deny approval of a tentative map, or a parcel map for which a tentative map was not required, unless it makes certain findings.

This bill would require the legislative body of a county to make 3 specified findings before approving a tentative map, or a parcel map for which a tentative map was not required, for an area located in a state responsibility area or a very high fire hazard severity zone, as defined. The bill would provide that this provision does not supersede the requirements of local ordinances and specified regulations that provide equivalent or more stringent minimum requirements.

(3) The California Environmental Quality Act (CEQA) requires a lead agency to prepare and certify the completion of an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA requires the Office of Planning and Research to prepare and develop guidelines for the implementation of CEQA by public agencies.

This bill would require the office, on or after January 1, 2013, at the time of the next update of the guidelines for implementing CEQA, in cooperation with the Department of Forestry and Fire Protection, to prepare, develop, and transmit to the Secretary of the Natural Resources Agency recommended proposed changes or amendments to the initial study checklist for the inclusion of questions related to fire hazard impacts for projects in state responsibility areas and very high fire hazard severity zones. The bill would also require the Secretary of the Natural Resources Agency to certify and adopt these recommended proposed changes or amendments.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

~~SECTION 1. Section 65040.13 is added to the Government Code, to read:~~

~~65040.13. On or before January 1, 2014, the Office of Planning and Research shall update its Fire Hazard Planning document prepared as part of the General Plan Technical Advice Series and issued in November 2003.~~

~~SEC. 2.~~

~~SECTION 1.~~ Section 65040.14 is added to the Government Code, to read:

65040.14. The Office of Planning and Research, when it adopts its next edition of the general plan guidelines pursuant to Section 65040.2, shall include the provisions of, or a reference to, paragraph (3) of subdivision (g) of Section 65302, and any other materials related to fire hazards or fire safety it deems appropriate.

~~SEC. 3.~~

~~SEC. 2.~~ Section 65302 of the Government Code is amended to read:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The location and designation of the extent of the uses of the land for public and private uses shall consider the identification of land and natural resources pursuant to paragraph (3) of subdivision (d). The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered

1 by the plan. The land use element shall identify and annually
2 review those areas covered by the plan that are subject to flooding
3 identified by flood plain mapping prepared by the Federal
4 Emergency Management Agency (FEMA) or the Department of
5 Water Resources. The land use element shall also do both of the
6 following:

7 (1) Designate in a land use category that provides for timber
8 production those parcels of real property zoned for timberland
9 production pursuant to the California Timberland Productivity Act
10 of 1982 (Chapter 6.7 (commencing with Section 51100) of Part 1
11 of Division 1 of Title 5).

12 (2) Consider the impact of new growth on military readiness
13 activities carried out on military bases, installations, and operating
14 and training areas, when proposing zoning ordinances or
15 designating land uses covered by the general plan for land, or other
16 territory adjacent to military facilities, or underlying designated
17 military aviation routes and airspace.

18 (A) In determining the impact of new growth on military
19 readiness activities, information provided by military facilities
20 shall be considered. Cities and counties shall address military
21 impacts based on information from the military and other sources.

22 (B) The following definitions govern this paragraph:

23 (i) “Military readiness activities” mean all of the following:

24 (I) Training, support, and operations that prepare the men and
25 women of the military for combat.

26 (II) Operation, maintenance, and security of any military
27 installation.

28 (III) Testing of military equipment, vehicles, weapons, and
29 sensors for proper operation or suitability for combat use.

30 (ii) “Military installation” means a base, camp, post, station,
31 yard, center, homeport facility for any ship, or other activity under
32 the jurisdiction of the United States Department of Defense as
33 defined in paragraph (1) of subsection (e) of Section 2687 of Title
34 10 of the United States Code.

35 (b) (1) A circulation element consisting of the general location
36 and extent of existing and proposed major thoroughfares,
37 transportation routes, terminals, any military airports and ports,
38 and other local public utilities and facilities, all correlated with the
39 land use element of the plan.

1 (2) (A) Commencing January 1, 2011, upon any substantive
2 revision of the circulation element, the legislative body shall
3 modify the circulation element to plan for a balanced, multimodal
4 transportation network that meets the needs of all users of streets,
5 roads, and highways for safe and convenient travel in a manner
6 that is suitable to the rural, suburban, or urban context of the
7 general plan.

8 (B) For purposes of this paragraph, “users of streets, roads, and
9 highways” mean bicyclists, children, persons with disabilities,
10 motorists, movers of commercial goods, pedestrians, users of public
11 transportation, and seniors.

12 (c) A housing element as provided in Article 10.6 (commencing
13 with Section 65580).

14 (d) (1) A conservation element for the conservation,
15 development, and utilization of natural resources including water
16 and its hydraulic force, forests, soils, rivers and other waters,
17 harbors, fisheries, wildlife, minerals, and other natural resources.
18 The conservation element shall consider the effect of development
19 within the jurisdiction, as described in the land use element, on
20 natural resources located on public lands, including military
21 installations. That portion of the conservation element including
22 waters shall be developed in coordination with any countywide
23 water agency and with all district and city agencies, including
24 flood management, water conservation, or groundwater agencies
25 that have developed, served, controlled, managed, or conserved
26 water of any type for any purpose in the county or city for which
27 the plan is prepared. Coordination shall include the discussion and
28 evaluation of any water supply and demand information described
29 in Section 65352.5, if that information has been submitted by the
30 water agency to the city or county.

31 (2) The conservation element may also cover all of the
32 following:

33 (A) The reclamation of land and waters.

34 (B) Prevention and control of the pollution of streams and other
35 waters.

36 (C) Regulation of the use of land in stream channels and other
37 areas required for the accomplishment of the conservation plan.

38 (D) Prevention, control, and correction of the erosion of soils,
39 beaches, and shores.

40 (E) Protection of watersheds.

1 (F) The location, quantity and quality of the rock, sand, and
2 gravel resources.

3 (3) Upon the next revision of the housing element on or after
4 January 1, 2009, the conservation element shall identify rivers,
5 creeks, streams, flood corridors, riparian habitats, and land that
6 may accommodate floodwater for purposes of groundwater
7 recharge and stormwater management.

8 (e) An open-space element as provided in Article 10.5
9 (commencing with Section 65560).

10 (f) (1) A noise element that shall identify and appraise noise
11 problems in the community. The noise element shall recognize the
12 guidelines established by the Office of Noise Control and shall
13 analyze and quantify, to the extent practicable, as determined by
14 the legislative body, current and projected noise levels for all of
15 the following sources:

16 (A) Highways and freeways.

17 (B) Primary arterials and major local streets.

18 (C) Passenger and freight online railroad operations and ground
19 rapid transit systems.

20 (D) Commercial, general aviation, heliport, helistop, and military
21 airport operations, aircraft overflights, jet engine test stands, and
22 all other ground facilities and maintenance functions related to
23 airport operation.

24 (E) Local industrial plants, including, but not limited to, railroad
25 classification yards.

26 (F) Other ground stationary noise sources, including, but not
27 limited to, military installations, identified by local agencies as
28 contributing to the community noise environment.

29 (2) Noise contours shall be shown for all of these sources and
30 stated in terms of community noise equivalent level (CNEL) or
31 day-night average level (L_{dn}). The noise contours shall be prepared
32 on the basis of noise monitoring or following generally accepted
33 noise modeling techniques for the various sources identified in
34 paragraphs (1) to (6), inclusive.

35 (3) The noise contours shall be used as a guide for establishing
36 a pattern of land uses in the land use element that minimizes the
37 exposure of community residents to excessive noise.

38 (4) The noise element shall include implementation measures
39 and possible solutions that address existing and foreseeable noise

1 problems, if any. The adopted noise element shall serve as a
2 guideline for compliance with the state's noise insulation standards.

3 (g) (1) A safety element for the protection of the community
4 from any unreasonable risks associated with the effects of
5 seismically induced surface rupture, ground shaking, ground
6 failure, tsunami, seiche, and dam failure; slope instability leading
7 to mudslides and landslides; subsidence; liquefaction; and other
8 seismic hazards identified pursuant to Chapter 7.8 (commencing
9 with Section 2690) of Division 2 of the Public Resources Code,
10 and other geologic hazards known to the legislative body; flooding;
11 and wildland and urban fires. The safety element shall include
12 mapping of known seismic and other geologic hazards. It shall
13 also address evacuation routes, military installations, peakload
14 water supply requirements, and minimum road widths and
15 clearances around structures, as those items relate to identified fire
16 and geologic hazards.

17 (2) The safety element, upon the next revision of the housing
18 element on or after January 1, 2009, shall also do the following:

19 (A) Identify information regarding flood hazards, including,
20 but not limited to, the following:

21 (i) Flood hazard zones. As used in this subdivision, "flood
22 hazard zone" means an area subject to flooding that is delineated
23 as either a special hazard area or an area of moderate or minimal
24 hazard on an official flood insurance rate map issued by the Federal
25 Emergency Management Agency (FEMA). The identification of
26 a flood hazard zone does not imply that areas outside the flood
27 hazard zones or uses permitted within flood hazard zones will be
28 free from flooding or flood damage.

29 (ii) National Flood Insurance Program maps published by
30 FEMA.

31 (iii) Information about flood hazards that is available from the
32 United States Army Corps of Engineers.

33 (iv) Designated floodway maps that are available from the
34 Central Valley Flood Protection Board.

35 (v) Dam failure inundation maps prepared pursuant to Section
36 8589.5 that are available from the California Emergency
37 Management Agency.

38 (vi) Awareness Floodplain Mapping Program maps and 200-year
39 flood plain maps that are or may be available from, or accepted
40 by, the Department of Water Resources.

1 (vii) Maps of levee protection zones.

2 (viii) Areas subject to inundation in the event of the failure of
3 project or nonproject levees or floodwalls.

4 (ix) Historical data on flooding, including locally prepared maps
5 of areas that are subject to flooding, areas that are vulnerable to
6 flooding after wildfires, and sites that have been repeatedly
7 damaged by flooding.

8 (x) Existing and planned development in flood hazard zones,
9 including structures, roads, utilities, and essential public facilities.

10 (xi) Local, state, and federal agencies with responsibility for
11 flood protection, including special districts and local offices of
12 emergency services.

13 (B) Establish a set of comprehensive goals, policies, and
14 objectives based on the information identified pursuant to
15 subparagraph (A), for the protection of the community from the
16 unreasonable risks of flooding, including, but not limited to:

17 (i) Avoiding or minimizing the risks of flooding to new
18 development.

19 (ii) Evaluating whether new development should be located in
20 flood hazard zones, and identifying construction methods or other
21 methods to minimize damage if new development is located in
22 flood hazard zones.

23 (iii) Maintaining the structural and operational integrity of
24 essential public facilities during flooding.

25 (iv) Locating, when feasible, new essential public facilities
26 outside of flood hazard zones, including hospitals and health care
27 facilities, emergency shelters, fire stations, emergency command
28 centers, and emergency communications facilities or identifying
29 construction methods or other methods to minimize damage if
30 these facilities are located in flood hazard zones.

31 (v) Establishing cooperative working relationships among public
32 agencies with responsibility for flood protection.

33 (C) Establish a set of feasible implementation measures designed
34 to carry out the goals, policies, and objectives established pursuant
35 to subparagraph (B).

36 (3) Upon the next revision of the housing element on or after
37 January 1, 2013, the safety element shall be reviewed and updated
38 as necessary to address the risk of fire for land classified as state
39 responsibility areas, as defined in Section 4102 of the Public
40 Resources Code, and land classified as very high fire hazard

1 severity zones, as defined in Section 51177. This review shall
2 consider the advice included in the Office of Planning and
3 Research's most recent publication of "Fire Hazard Planning,
4 General Technical Advice Series" and shall also include all of the
5 following:

6 (A) Information regarding fire hazards, including, but not limited
7 to, all of the following:

8 (i) Fire hazard severity zone maps available from the Department
9 of Forestry and Fire Protection.

10 (ii) Any historical data on wildfires available from local
11 agencies or a reference to where the data can be found.

12 (iii) Information about wildfire hazard areas that may be
13 available from the United States Geological Survey.

14 (iv) General location and distribution of existing and planned
15 uses of land in very high fire hazard severity zones and in state
16 responsibility areas, including structures, roads, utilities, and
17 essential public facilities. The location and distribution of planned
18 uses of land shall not require defensible space compliance measures
19 required by state law or local ordinance to occur on publicly owned
20 lands or open space designations of homeowner associations.

21 (v) Local, state, and federal agencies with responsibility for fire
22 protection, including special districts and local offices of
23 emergency services.

24 (B) A set of goals, policies, and objectives based on the
25 information identified pursuant to subparagraph (A) for the
26 protection of the community from the unreasonable risk of wildfire.

27 (C) A set of feasible implementation measures designed to carry
28 out the goals, policies, and objectives based on the information
29 identified pursuant to subparagraph (B) including, but not limited
30 to, all of the following:

31 (i) Avoiding or minimizing the wildfire hazards associated with
32 new uses of land.

33 (ii) Locating, when feasible, new essential public facilities
34 outside of high fire risk areas, including, but not limited to,
35 hospitals and health care facilities, emergency shelters, emergency
36 command centers, and emergency communications facilities, or
37 identifying construction methods or other methods to minimize
38 damage if these facilities are located in a state responsibility area
39 or very high fire hazard severity zone.

1 (iii) Designing adequate infrastructure if a new development is
2 located in a state responsibility area or in a very high fire hazard
3 severity zone, including safe access for emergency response
4 vehicles, visible street signs, and water supplies for structural fire
5 suppression.

6 (iv) Working cooperatively with public agencies with
7 responsibility for fire protection.

8 (D) If a city or county has adopted a fire safety plan or document
9 separate from the general plan, an attachment of, or reference to,
10 a city or county's adopted fire safety plan or document that fulfills
11 commensurate goals and objectives and contains information
12 required pursuant to this paragraph.

13 (4) After the initial revision of the safety element pursuant to
14 paragraphs (2) and (3), upon each revision of the housing element,
15 the planning agency shall review and, if necessary, revise the safety
16 element to identify new information that was not available during
17 the previous revision of the safety element.

18 (5) Cities and counties that have flood plain management
19 ordinances that have been approved by FEMA that substantially
20 comply with this section, or have substantially equivalent
21 provisions to this subdivision in their general plans, may use that
22 information in the safety element to comply with this subdivision,
23 and shall summarize and incorporate by reference into the safety
24 element the other general plan provisions or the flood plain
25 ordinance, specifically showing how each requirement of this
26 subdivision has been met.

27 (6) Prior to the periodic review of its general plan and prior to
28 preparing or revising its safety element, each city and county shall
29 consult the California Geological Survey of the Department of
30 Conservation, the Central Valley Flood Protection Board, if the
31 city or county is located within the boundaries of the Sacramento
32 and San Joaquin Drainage District, as set forth in Section 8501 of
33 the Water Code, and the California Emergency Management
34 Agency for the purpose of including information known by and
35 available to the department, the agency, and the board required by
36 this subdivision.

37 (7) To the extent that a county's safety element is sufficiently
38 detailed and contains appropriate policies and programs for
39 adoption by a city, a city may adopt that portion of the county's

1 safety element that pertains to the city's planning area in
2 satisfaction of the requirement imposed by this subdivision.

3 ~~SEC. 4.~~

4 *SEC. 3.* Section 65302.5 of the Government Code is amended
5 to read:

6 65302.5. (a) At least 45 days prior to adoption or amendment
7 of the safety element, each county and city shall submit to the
8 California Geological Survey of the Department of Conservation
9 one copy of a draft of the safety element or amendment and any
10 technical studies used for developing the safety element. The
11 division may review drafts submitted to it to determine whether
12 they incorporate known seismic and other geologic hazard
13 information, and report its findings to the planning agency within
14 30 days of receipt of the draft of the safety element or amendment
15 pursuant to this subdivision. The legislative body shall consider
16 the division's findings prior to final adoption of the safety element
17 or amendment unless the division's findings are not available
18 within the above prescribed time limits or unless the division has
19 indicated to the city or county that the division will not review the
20 safety element. If the division's findings are not available within
21 those prescribed time limits, the legislative body may take the
22 division's findings into consideration at the time it considers future
23 amendments to the safety element. Each county and city shall
24 provide the division with a copy of its adopted safety element or
25 amendments. The division may review adopted safety elements
26 or amendments and report its findings. All findings made by the
27 division shall be advisory to the planning agency and legislative
28 body.

29 (b) (1) The draft element of or draft amendment to the safety
30 element of a county or a city's general plan shall be submitted to
31 the State Board of Forestry and Fire Protection and to every local
32 agency that provides fire protection to territory in the city or county
33 at least 90 days prior to either of the following:

34 (A) The adoption or amendment to the safety element of its
35 general plan for each county that contains state responsibility areas.

36 (B) The adoption or amendment to the safety element of its
37 general plan for each city or county that contains a very high fire
38 hazard severity zone as defined pursuant to subdivision (b) of
39 Section 51177.

(2) A county that contains state responsibility areas and a city or county that contains a very high fire hazard severity zone as defined pursuant to subdivision (b) of Section 51177 shall submit for review the safety element of its general plan to the State Board of Forestry and Fire Protection and every local agency that provides fire protection to territory in the city or county in accordance with the following dates, as specified, unless the local government submitted the element within five years prior to that date:

(A) Local governments within the regional jurisdiction of the San Diego Association of Governments: December 31, 2010.

(B) Local governments within the regional jurisdiction of the Southern California Association of Governments: December 31, 2011.

(C) Local governments within the regional jurisdiction of the Association of Bay Area Governments: December 31, 2012.

(D) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, and the Sacramento Area Council of Governments: June 30, 2013.

(E) Local governments within the regional jurisdiction of the Association of Monterey Bay Area Governments: December 31, 2014.

(F) All other local governments: December 31, 2015.

(3) The State Board of Forestry and Fire Protection shall, and a local agency may, review the draft or an existing safety element and recommend changes to the planning agency within 60 days of its receipt regarding both of the following:

(A) Uses of land and policies in state responsibility areas and very high fire hazard severity zones that will protect life, property, and natural resources from unreasonable risks associated with wildland fires.

(B) Methods and strategies for wildland fire risk reduction and prevention within state responsibility areas and very high fire hazard severity zones.

(4) Prior to the adoption of its draft element or draft amendment, the board of supervisors of the county or the city council of a city shall consider the recommendations, if any, made by the State Board of Forestry and Fire Protection and any local agency that provides fire protection to territory in the city or county. If the board of supervisors or city council determines not to accept all

1 or some of the recommendations, if any, made by the State Board
2 of Forestry and Fire Protection or local agency, the board of
3 supervisors or city council shall communicate in writing to the
4 State Board of Forestry and Fire Protection or the local agency,
5 its reasons for not accepting the recommendations.

6 (5) If the State Board of Forestry and Fire Protection's or local
7 agency's recommendations are not available within the time limits
8 required by this section, the board of supervisors or city council
9 may act without those recommendations. The board of supervisors
10 or city council shall take the recommendations into consideration
11 the next time it considers amendments to the safety element.

12 ~~SEC. 5.~~

13 *SEC. 4.* Section 66474.02 is added to the Government Code,
14 to read:

15 66474.02. (a) Before approving a tentative map, or a parcel
16 map for which a tentative map was not required, for an area located
17 in a state responsibility area or a very high fire hazard severity
18 zone, as both are defined in Section 51177, a legislative body of
19 a county shall make the following three findings:

20 (1) A finding supported by substantial evidence in the record
21 that the design and location of each lot in the subdivision, and the
22 subdivision as a whole, are consistent with any applicable
23 regulations adopted by the State Board of Forestry and Fire
24 Protection pursuant to Sections 4290 and 4291 of the Public
25 Resources Code.

26 (2) A finding supported by substantial evidence in the record
27 that structural fire protection and suppression services will be
28 available for the subdivision through any of the following entities:

29 (A) A county, city, special district, political subdivision of the
30 state, or another entity organized solely to provide fire protection
31 services that is monitored and funded by a county or other public
32 entity.

33 (B) The Department of Forestry and Fire Protection by contract
34 entered into pursuant to Section 4133, 4142, or 4144 of the Public
35 Resources Code.

36 (3) A finding that to the extent practicable, ingress and egress
37 for the subdivision meets the regulations regarding road standards
38 for fire equipment access adopted pursuant to Section 4290 of the
39 Public Resources Code and any applicable local ordinance.

(b) This section shall not supersede regulations established by the State Board of Forestry and Fire Protection or local ordinances that provide equivalent or more stringent minimum requirements than those contained within this section.

~~SEC. 6.~~

SEC. 5. Section 21083.01 is added to the Public Resources Code, to read:

21083.01. (a) On or after January 1, 2013, at the time of the next review of the guidelines prepared and developed to implement this division pursuant to subdivision (f) of Section 21083, the Office of Planning and Research, in cooperation with the Department of Forestry and Fire Protection, shall prepare, develop, and transmit to the Secretary of the Natural Resources Agency recommended proposed changes or amendments to the initial study checklist of the guidelines implementing this division for the inclusion of questions related to fire hazard impacts for projects located on lands classified as state responsibility areas, as defined in Section 4102, and on lands classified as very high fire hazard severity zones, as defined in subdivision (i) of Section 51177 of the Government Code.

(b) Upon receipt and review, the Secretary of the Natural Resources Agency shall certify and adopt the recommended proposed changes or amendments prepared and developed by the Office of Planning and Research pursuant to subdivision (a).

~~SEC. 7.~~

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.